

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

**Subpart GG—New Mexico**

2. Section 52.1620 is amended by adding paragraph (c)(59) to read as follows:

**§ 52.1620 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(59) A revision to the New Mexico State Implementation Plan for Transportation Conformity: Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) No. 42 “Transportation Conformity” as adopted on November 9, 1994 and filed with the State Records and Archives Center on December 16, 1994, was submitted by the Governor on December 19, 1994. No action is taken on AQCR No. 42 Section 11.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) No. 42 “Transportation Conformity” as adopted on November 9, 1994 and filed with the State Records and Archives Center on December 16, 1994. No action is taken on AQCR No. 42 Section 11.

(ii) Additional material. None.

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**40 CFR Part 52**

[TX–56–1–7209a; FRL–5322–4]

**Approval and Promulgation of Implementation Plan for Texas: Transportation Conformity Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This document approves a revision to the Texas State Implementation Plan (SIP) that contains transportation conformity rules. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The final approval is limited only to 40 CFR part 51, subpart T (Transportation Conformity), and the SIP revisions submitted under

40 CFR part 51, subpart W, conformity of general Federal actions, will be addressed in a separate notice. The EPA is approving this SIP revision under section 110(k) of the Clean Air Act (CAA). The rationale for the final approval action and other information are provided in this document.

**DATES:** This action is effective on January 8, 1996, unless notice is postmarked by December 8, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

**ADDRESSES:** Copies of the State’s submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, Mobile Source Division, 12124 Park 35 Circle, Austin, Texas 78753, Telephone: (512) 239–1943.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Behnam, P. E.; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247.

**SUPPLEMENTARY INFORMATION:****I. Background**

Conformity provisions first appeared in the CAA amendments of 1977 (Public Law 95–95). Although these provisions did not define conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The CAA Amendments of 1990 expanded the scope and content of the conformity provisions by defining conformity to an implementation plan. Conformity is defined in section 176(c) of the CAA as conformity to the SIP’s purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any

standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to a SIP. The EPA published the final transportation conformity rules in the November 24, 1993, Federal Register and codified them at 40 CFR part 51 subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. All other Federal actions (actions other than those under Title 23 U.S.C. or the Federal Transit Act) were addressed in a separate Federal Register notice. The conformity rules require the States and local agencies to adopt and submit a transportation conformity SIP revision to the EPA not later than November 24, 1994. This notice does not address the conformity requirements of general Federal actions (40 CFR part 51 subpart W), and EPA will take action on these SIPs in a separate notice.

**II. Evaluation of State’s Submission**

In response to the Federal Register notice of November 24, 1993, the State of Texas submitted a SIP revision which included adoption of the transportation conformity rules and other required documents. The transportation conformity SIP revision is applicable to the nonattainment or maintenance areas. It must be noted that the final transportation conformity rule requires that the majority of the Federal rules be incorporated in verbatim form with a few exceptions, however, the State rules can not be more stringent than the Federal rules. The consultation section of the rule (40 CFR 51.402) is among these exceptions and the State and local (where applicable) air quality agencies are required to develop their own consultation rules. The following paragraphs present EPA’s review and evaluation of this SIP revision.

**A. Development of Consultation Rules**

The Federal rules require the SIP’s to include processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts in accordance with the criteria set forth in 40 CFR part 51 § 51.402. Specifically, to implement the requirements of Section 51.402, the SIP revisions must include processes and procedures to be undertaken by Metropolitan Planning Organizations (MPO), State Department of

Transportation, and the U. S. Department of Transportation (USDOT) with State and local air quality agencies and EPA before making conformity determinations, and by State and local air quality agencies and EPA with MPO's, State Departments of Transportation, and USDOT in developing applicable SIPs.

In order to satisfy these requirements, the State established an ad hoc multi-agency committee which included representatives from the State air quality agency, State DOT, USDOT, MPO's, EPA, the local air quality agency, local transportation agencies, and local transit operators. The State air quality agency served as the lead agency in coordinating the multi-agency efforts for developing the consultation rules. The committee met approximately on a biweekly basis and drafted consultation rules by using the requirements of 40 CFR 51.402 and 23 CFR 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is unique to the State of Texas. The State has adequately addressed all provisions of 40 CFR 51.402 and has met the EPA SIP requirements.

#### *B. Transition From the Interim Period to the Control Strategy Period; 40 CFR 51.448*

The EPA promulgated an interim final rule on February 8, 1995, that amended certain provisions of 40 CFR 51.448 in the Federal transportation conformity rules. The interim final rule aligned the timing of certain transportation conformity consequences with the imposition of the CAA highway sanctions for a six-month period. The amendment delays the lapse in conformity status, which would otherwise prevent approval of new highway and transit projects, and allow States more time to prevent the lapse by submitting complete control strategy implementation plan. Since the States were required to submit transportation conformity SIPs not later than November 24, 1994, the State's SIP revision does not include the amendment of February 8, 1995. Lack of amended sections of 40 CFR 51.448 in the State's rules makes the State's rules more stringent than the Federal rules. However, the EPA believes that the State has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to the EPA. The State in no way intentionally adopted more stringent rules than the Federal rules in developing its transportation conformity

SIP. Therefore, it would be unreasonable to discredit the State's good faith effort in submitting the transportation conformity SIP on time and disapprove this portion of the State's SIP. Since the State will be required to submit a SIP revision in the near future to incorporate the amended portions of the Federal transportation conformity rules, the EPA believes that it would be reasonable to exclude the section of the State's rules which corresponds to 40 CFR 51.448, from this SIP approval action. As a result, the EPA is not taking any action on a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules.

#### *C. Evaluation of the State Rules*

On November 6, 1994, the Governor of Texas submitted a SIP revision in compliance with 40 CFR Part 51 Subpart T that contained the State's transportation conformity and its consultation rule. The SIP revision was adopted by the Texas Natural Resource Conservation Commission (TNRCC) on October 19, 1994, after appropriate public participation and interagency consultation. The TNRCC has adopted the Federal rules by "incorporation by reference" except for the interagency consultation rule which has been developed in the manner described earlier in this notice. The TNRCC transportation conformity rules are identical to the Federal rules and the State has made no additional changes or modifications. The EPA has determined that the TNRCC's transportation conformity rule meets the Federal requirements except as provided in section II(B) of this notice, and EPA is approving this SIP revision.

#### *III. Final Approval Action*

The EPA is approving the transportation conformity SIP revision for the State of Texas except for a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules. The EPA is not taking any action on a portion of section 114.27(c) that contains provisions of 40 CFR 51.448 under the State rules, as discussed in detail in section II(B) of this notice. The EPA has evaluated this SIP revision and has determined that Texas has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR Part 51 Subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of these rules by the TNRCC at the local level.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on January 8, 1996, unless adverse or critical comments are received by December 8, 1995. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective January 8, 1996.

The EPA has reviewed this transportation conformity SIP revision for conformance with the provisions of the CAA and has determined that this action conforms to those requirements.

#### *IV. Administrative Requirements*

##### *A. Regulatory Process*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), the EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due

to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2). The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 8, 1996. Filing a petition for reconsideration of this final rule by the Regional Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### *B. Unfunded Mandates*

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may

result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

#### *C. Procedural Information*

This action has been classified as a Table Three action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from May Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

#### *D. Executive Order 12866*

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: October 20, 1995.

A. Stanley Meiburg,  
*Acting Regional Administrator.*

Title 40, part 52, of the Code of Federal Regulations is amended to read as follows:

#### **PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### **Subpart SS—Texas**

2. Section 52.2270 is amended by adding paragraph (c)(96) to read as follows:

##### **§ 52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(96) A revision to the Texas State Implementation Plan for Transportation Conformity: Regulation 30 TAC Chapter 114 "Control of Air Pollution from Motor Vehicles", Section 114.27 "Transportation Conformity" as adopted

by the Texas Natural Resource Conservation Commission (TNRCC) on October 19, 1994, was submitted by the Governor on November 6, 1994. No action is taken on a portion of 30 TAC 114.27(c) that contains provisions of 40 CFR 51.448.

(i) Incorporation by reference.

(A) The TNRCC 30 TAC Chapter 114 "Control of Air Pollution from Motor Vehicles", 114.27 "Transportation Conformity" as adopted by the TNRCC on October 19, 1994. No action is taken on a portion of 30 TAC 114.27(c) that contains provisions of 40 CFR 51.448.

(B) TNRCC order No. 94-40 as passed and approved on October 12, 1994.

(ii) Additional material. None.

[FR Doc. 95-27680 Filed 11-7-95; 8:45 am]

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## **GENERAL SERVICES ADMINISTRATION**

### **41 CFR Part 101-41**

[FPMR Amendment G-110]

RIN 3090-AF53

### **Use of Cash To Procure Official Passenger Transportation Services**

**AGENCY:** Federal Supply Service, GSA.  
**ACTION:** Final rule.

**SUMMARY:** This regulation amends the Federal Property Management Regulations (FPMR) to grant agency heads or their designated representatives authority to approve all cash purchases of passenger transportation services. Although agency heads or their designated representatives currently have permanent authority to approve emergency cash purchases, their authority to approve nonemergency cash purchases of transportation services in excess of \$100 was temporary and expired on July 31, 1995 (see FPMR Temporary Regulation G-57, Supp. 1). This amendment gives agencies permanent authority to approve all cash purchases of passenger transportation services.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** John W. Sandfort, Chief, Policy, Procedures, and Liaison Branch, Office of Transportation Audits (202-219-3164).

**SUPPLEMENTARY INFORMATION:** FPMR Temporary Regulation G-57, published in the Federal Register on July 26, 1993 (58 FR 39664), invited agency comments through December 31, 1993, concerning the revised cash policy. Comments were